IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21067 of 2004

Between:

Namburi Subba Rao, s/o Koteswara Rao, Hindu,
Engineering Department, Bapatla Engineering College, Bapatla, Guntrur District,
R/o D.No. 4-9-83, 4th Line, Patel Nagar, Bapatla, Guntur District.

..... PETITIONER

AND

1 Bapatla Engineering College, Bapatla, Guntur District, rep. by its Principal.
2 Bapatla Engineering College, Bapatla, Guntur District, rep. by its President.
3 The Government of Andhra Pradesh, rep. by its Director of Technical Education, BRKR Buildings, Tank Bund, Hyderabad.
4 The Government of Andhra Pradesh, rep. by its Principal Secretary, Labour Employment Training and Factories Department, Secretariat, Hyderabad.
5 All India Council for Technical Education, Indira Gandhi Sports Complex, I.P.Estate, New Delhi, rep. by its Chairman.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari or any other appropriate writ, quashing the order passed by the 2nd respondent in Ref.No. BEC/PF/3202 dt. 4-11-2004 and consequentially directing the 2nd respondent to forthwith reinstate the petitioner in service with proper designation equivalent to that of his designation in the electronic and communications Engineering Department with all consequential benefits.

Counsel for the Petitioner:MR.S.R.SANKU

Counsel for the Respondent Nos 1 & 2: B. Adinarayana Rao

Counsel for respondents 3 & 4: GP FOR TECHNICAL EDUCATION

Counsel for the respondent No.5: C. Sindu Kumari

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 21067 of 2004

O R D E R:

The present writ petition is filed challenging the suspension order issued by the 1st respondent dated 4.11.2004.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner states that by way of victimization for his legitimate act of moving this court earlier by way of W.P. 17929 of 2004 where under he assailed his illegal transfer, the petitioner was placed under suspension. He is the Convener of non-teaching technical staff Forum in the college and therefore he has been making representations to the respondents seeking implementation of the technical pay scales to the technical staff and as the respondent-college is adopting a dual method in implementing the pay-scales, he made a representation to the authorities concerned and because of their efforts to get their legitimate pay-scales there arose some animosity between them and their management. Hence the present petition is filed stating that there was no insubordination on his part; that he himself reported to duty; that there is nothing like

his refusing to receive the transfer orders; that the 1st respondent has no jurisdiction to suspend him without obtaining prior permission and there is no time limit indicated in the suspension order, which is arbitrary; that with a pre-conceived plan to harass the petitioner the suspension order has been issued without applying mind and hence the present writ petition.

The respondents 1 and 2 filed counter affidavit stating that the 1st respondent-college is a private unaided educational institution and it is not a State or authority under Article 12 of the Constitution of India. The suspension of the petitioner for insubordination is nothing to do with the filing of the writ petition. The transfer from one lab of the college to the other lab is only in keeping with the standards of education in the interest of students. The petitioner is deliberately cloaking the illegal act of utter disregard of duties. The evasion of work by the petitioner despite the clear assurance of the college that his service conditions are no way effected by transfer from E.C.E. Lab to Chemistry lab has led to his suspension. There is no mala fide intention in suspending the petitioner as alleged. Section 79(1) of the A.P. Education Act has no application to the present facts of the case. Hence the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner vehemently contended that because the petitioner has submitted representations to various authorities for implementing the Government pay-scales to the ministerial staff, the management developed animosity against him; that with a mala fide intention the present impugned order has been passed; that there is no insubordination, misbehaviour or gross

negligence of the duties by the petitioner and that the 1st respondent has no jurisdiction to suspend the petitioner.

On the other hand, learned counsel for the respondents 1 and 2 contended that as per the rules governing the service conditions of the petitioner the 1st respondent is the competent authority to place an employee under suspension. The suspension order is not vitiated by any mala fides and there is no factual foundation to show that the suspension order is vitiated by any mala fides. Because of insubordination and gross negligence of duties the petitioner was suspended. Hence there are no grounds to interfere with the impugned order.

Learned counsel for the respondents 3 to 5 contended that the writ petition itself is not maintainable in view of the fact that the 1st respondent-college is the private unaided educational institution and the respondent-college is not receiving any kind of financial assistance from the State Government and therefore it is liable to be rejected.

This court does not express any opinion with regard to the maintainability of the writ petition because a division bench of this court in W.A. 108 OF 2005 dated 1.2.2005 held that the writ petition is not maintainable against the 1st respondent which is a private Engineering College. A review petition is filed by the petitioner therein and therefore the division bench of this court has to take appropriate decision. Hence it is not necessary to enter into the fact whether the 1st respondent comes within the description of State or authority under Article 12 of the Constitution of India.

The suspension order was issued by the President of the 1st respondent-college on 4.11.2004. The reason given in the impugned proceedings is that the petitioner was transferred from the Department of Chemistry vide proceedings dated 30.9.2004 but he refused to receive the said transfer order. Then the Principal issued a Memo dated 5.10.2004 calling for the explanation for not receiving the order. Since then the petitioner is staying idle in the department without taking charge from K. Ankamma Chowdary and not doing any work in the department as assigned by the Head of the Department of Chemistry from time to time. Therefore, the Management was constrained to take a serious view in the above matter in the interest of the institution and hence he was placed under suspension. The authority who issued these impugned proceedings is not under challenge. Though a ground has been taken in the writ petition that the 1st respondent has no jurisdiction to suspend him without obtaining prior permission of the competent authority under Section 79(1) of the A.P. Education Act, but Section 79(1) of the Act has no application to the present facts of the case. The rules governing the service conditions of the petitioner have not been placed before this court to show that the President of the respondent-college has no authority to place an employee under suspension. Therefore, the contention of the learned counsel for the petitioner cannot be accepted.

With regard to the malice, there is no factual foundation. Along with the petitioner, some other persons are also trying to get their grievances solved by making representations. If really the respondent-college wants to take any action, the same would have

been taken against all the persons who have given representation to the concerned authorities and the petitioner would not have been singled out. As rightly contended by the learned counsel for the respondents 1 and 2, there is no factual foundation with regard to the malice on the part of the President who issued the impugned proceedings. The petitioner refused to receive the transfer order. When an explanation was called for, he filed a writ petition. Since the filing of the writ petition, he was sitting idle in the department without taking charge from K. Ankamma Chowdary and not doing any work in the department as assigned by the Head of the Department of Chemistry from time to time. He was giving replies evasively with scandalous language against the higher authorities polluting the institution. Therefore, the President placed the petitioner under suspension. The grievance if any has to be sorted out by making a representation to the concerned authorities. He cannot disobey the orders of the Principal. The reasons given in the suspension order are prima facie misconduct and insubordination and that is the reason why the President of the respondent-College placed the petitioner under suspension.

The impugned order does not suffer from any legal infirmities so as to call for interference by this court. The writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal, Bapatla Engineering College, Bapatla, Guntur District,
2 The President, Bapatla Engineering College, Bapatla, Guntur District,
3 The Director of Technical Education, Government of Andhra Pradesh, BRKR Buildings, Tank Bund, Hyderabad.
4 The Principal Secretary, Government of Andhra Pradesh, Labour Employment Training and Factories Department, Secretariat, Hyderabad.
5 The Chairman, All India Council for Technical Education, Indira Gandhi Sports Complex, I.P.Estate, New Delhi.

6. Two C.Cs. to the G.P. for Technical Education, High Court Buildings, Hyderabad (OUT).

7. 2 CD copies